

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:

The Commercial Mobile Alert
System

PS Docket No. 07-287

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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I. INTRODUCTION AND SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California), submit these comments in response to the Notice of Proposed Rulemaking (NPRM) adopted on December 14, 2007, in the above-captioned proceeding.¹ The Federal Communications Commission (FCC or Commission) noted that its NPRM is the next step in establishing a Commercial Mobile Alert System (CMAS) in compliance with the Warning Alert and Response

¹ In the Matter of the Commercial Mobile Alert System, Notice of Proposed Rulemaking, PS Docket No. 07-287, adopted. December 14, 2007.

Network (WARN) Act.² Section 603(c) of the WARN Act required the FCC to establish the Commercial Mobile Service Alert Advisory Committee (CMSAAC) to develop and recommend technical standards and protocols for the voluntary transmission of emergency alerts by commercial mobile service providers (CMSPs) within one year from the date of enactment of the WARN Act. The CMSAAC produced its final report and recommendations on October 12, 2007.

In the NPRM, the FCC seeks comment on the following issues: 1) the CMSAAC recommendations; 2) the system critical protocols and technical requirements for CMAS; 3) a mechanism under which CMSPs may elect to participate in the CMAS and to disclose to their subscribers whether or not they will participate; and 4) technical testing requirements for CMSPs that elect to transmit emergency alerts and for the devices and equipment used by such providers for transmitting such alerts. The CPUC will comment on another vital issue – whether states should have access to carrier notifications of elections to transmit, to not transmit and to withdraw from transmittal of alerts. California supports affording the states such access.

Reliable emergency alerts are critical to effective communications before, during, and immediately following emergency and catastrophic

² P. L. 109-347, Title VI.

events. Such communications are essential between the State of California and the federal government, and among California's state and local governmental entities, state and local public safety entities, as well as California's residents and business entities. California provides these comments on the administration, composition and implementation of wireless alerts:

- 1) California supports the CMSAAC recommendation that a federal government entity fulfill the role of "Alert Aggregator", but recommends that several regional points of contact be integrated into the federal structure;
- 2) California supports creation of a central system as the best way to configure CMAS;
- 3) California supports adoption of a common protocol, such as CAP, as essential for interoperability of the CMAS;
- 4) California supports the CMSAAC recommendation of three classifications of alerts: Presidential-level, Imminent threat to life and property, and Child Abduction Emergency Alert (Amber Alert);
- 5) California agrees with the CMSAAC recommendation that all service providers support, at minimum, a capability for a text-based common alerting message format support across multiple service platform technologies;
- 6) California supports the standardization of alerting messages and urges that in addition to including in the message format the CMSAAC recommended elements of event type, area affected, recommended action, expiration time with time zone, and sending agency, the FCC consider adding an element for a URL and, if doing so will not cause congestion in the network, telephone numbers;

- 7) California recommends the Commission consider implementing a protocol using Zip Codes as the minimum geographic indicator for targeted alerts;
- 8) California recommends that urban areas with populations exceeding 1,000,000 inhabitants should be given priority consideration in any precise geo-coding plan, to the extent that doing so would be technically feasible;
- 9) California urges the Commission to ensure that alerts include the specific indicators, format, and information necessary for use with or by equipment designed for the disabled community; and
- 10) California strongly supports all efforts to ensure that critical public safety information is accessible to subscribers with limited English proficiency.

The FCC seeks comment specifically regarding carrier notifications to customers of carriers which elect to not transmit or to withdraw from transmitting alerts. The CPUC recommends that, on this point, the Commission establish rules similar to those in Section 63.71 and Section 63.90 of the Code of Federal Regulation³ requiring notification in writing to each affected subscriber, and requiring a service provider who is discontinuing service to post a public notice of that discontinuance in a conspicuous place. A CMSP that withdraws from transmission of alerts should also notify existing customers, in a

³ 47 C.F.R. § 63.71 (requiring any domestic service provider that seeks to discontinue, reduce or impair service to notify all affected subscribers of the planned discontinuance, reduction, or impairment of service, including a notice in writing to each affected subscriber with FCC mandated text); 47 C.F.R. § 63.90 (requiring a service provider discontinuing service to post a public notice of 20 inches by 24 inches in a conspicuous place and containing all pertinent information related to the discontinuance.)

manner to be prescribed by the Commission, of their right to discontinue service without financial penalty.

Any notification to customers that a provider has elected to transmit the alerts should include the information that the subscriber may choose to opt out of receiving level two and level three classification alerts.

Finally, the CMSAAC proposed testing procedures satisfy the requirements of section 602(f) of the WARN Act, and the current testing procedures utilized by the EAS provide a satisfactory model for the periodic testing of the CMAS system after it has been deployed. The CPUC, however, strongly recommends that thorough reliability testing be done before the system is widely deployed.

II. RECOMMENDATIONS

A. The FCC Should Designate A National Alert Aggregator

The FCC seeks comment on the role of the federal government in managing the CMAS.⁴ The CMSAAC recommended that a federal government entity fulfill the role of “Alert Aggregator” and that the system be acquired, managed, operated and administered by the same government entity. California supports that recommendation. Indeed,

⁴ NPRM, ¶ 12.

to be effective, CMAS must have the trust of the citizens who are relying on the alerts. The Alert Aggregator must be responsible for the authentication and validation of the alert messages across the alerting framework. The CPUC concurs that a governmental entity is best positioned to operate that framework.

At the same time, California believes that the role of the “Alert Aggregator” needs to be more clearly defined, in particular as to how the Alert Aggregator will work with state Emergency Operating Centers (EOCs), local EOCs, and other federal entities. It is not clear what policies and procedures will be implemented across Reference Point A in the functional architecture to ensure the timely dissemination of alerts initiated by state and local EOCs. It is also not clear how the Alert Aggregator will interface with existing notification systems already in use at the state, local, county and university level. Because CMAS has a state and local purpose as well as a national purpose, distribution of the multi-layer level of alerts suggests that several regional points of contact should be integrated into the federal structure.

B. The FCC National Alert Aggregator Should Be Centralized

In the NPRM, the Commission notes the CMSAAC recommendation for one national centralized aggregation entity, and seeks comment as to whether a centralized system is indeed the best way to accomplish the goals of CMAS, as envisioned by the WARN Act.⁵ California supports establishment of a central system as the best way to configure CMAS. Authentication and validation functions can best be performed by a centralized entity. With regional points of contact, a centralized system can support agencies down to county and municipal levels. Regional points of contact could be co-terminus with the existing Federal Emergency Management Agency (FEMA) regional centers. State emergency centers are often co-located with the FEMA Regional Operations Centers (ROCs) and are well situated to work with them to help manage alerts at the county and municipal levels.

This level of coordination could also parallel a state's role in any Emergency Alert System (EAS) activation. In the EAS system, in the event of an emergency, a national alert flows to the National Primary Stations (stations designated as the primary entry point for national alerts) which in turn send the alert on to local stations. Distribution of the state and local warnings is provided in accordance with local area

⁵ NPRM, ¶ 13.

and state EAS plans. When a local government needs to warn its citizens, the local EAS system provides the technical capability to issue the warning.

California's Office of Emergency Service (OES) is the lead agency for emergency management in California state government. Here, the EAS is used to warn of an imminent danger, such as flooding from severe thunderstorms; to warn of events that are actually occurring in some area(s), such as tornadoes; to effect evacuations of areas prompted by an incident, such as a wildfire; or to notify the public of some other event requiring immediate action. During an emergency, OES also works with the FEMA Regional Operations Center. California envisions that our state OES would play a key role in helping to coordinate emergency alerts on both the CMAS and EAS systems.

A centralized operation, configured properly, will avoid a single point of failure. The NPRM contemplates that the Alert Aggregator will consist of separate paths for the delivery of the message *to* the Alert Gateway, and *from* the Alert Gateway for message status notification. Multiple transmission paths in separate physical conduits should provide the necessary redundancy to avoid any single point of failure concerns.

Finally, while California supports the concept of centralized operations, incidents requiring alerts may very well have a local or regional focus. As such, there must be clearly defined methods and procedures to facilitate locally generated alerts, so that the centralized operations do not in any way encumber local entities from quickly sending out alerts.

C. The CMAS Should Incorporate a Common Alerting Protocol

The Commission seeks input on whether CMAS should use the Common Alerting Protocol (CAP) as the basic alerting protocol.⁶ A common protocol is essential for interoperability. CAP is a digitally-based system that enables government officials to not only transmit emergency messages in text, but to transmit voice messages, pictures, and other data. CAP also is a format which allows a consistent warning message to be disseminated simultaneously over many different warning systems. And, it facilitates the detection of emerging patterns in local warnings of various kinds, such as might indicate an undetected hazard or hostile act. CAP also provides a template for effective warning messages based on best practices identified in real world experience. As noted in the NPRM, the CAP format can be

⁶ NPRM, ¶ 14.

accepted by a variety of devices or systems, and facilitates interoperability between devices, an attribute that we noted above is essential to establishing a CMAS that can operate over multiple service platforms.⁷ Thus, the CAP protocol should facilitate the transition to the next generation alerting systems. It is the protocol used in the EAS system, and it makes the most sense to use CAP for CMAS. CAP should be implemented as early as possible after all the appropriate testing has taken place. California has offered to be the first office application in order to bring the CMAS system to our state as soon as practicable.

D. The CMAS Should Include Three Classifications of Alerts

The Commission also seeks input as to whether emergency alerts should be classified. CMSAAC recommended three classifications of alerts: Presidential-level, Imminent threat to life and property, and Child Abduction Emergency (Amber Alert). Presidential-level alerts are clearly one necessary classification. Imminent threats to life and property, that is, alerts about natural or man-caused disasters, represent a valid second classification. This classification will cover the types of disaster situations that occur in California including flooding

⁷ NPRM, p. 6. FN 28.

from severe thunderstorms, tornados, earthquakes, and wildfires, and would provide us the opportunity to warn our citizens of events that are actually occurring, such as the need to evacuate an area, or of some other event requiring immediate action. The number of fields in the CAP protocol - element name, attribute, definition, and value domain - should provide sufficient space to enable us to populate the message and send descriptive alerts.

California also agrees that Amber Alerts should be part of CMAS. The potential value of an Amber Alert, that is, finding a missing child, is reason enough to support this classification. We appreciate that customers' receiving too many alerts could produce a "cry wolf" response to the messages, meaning that the public could ignore them. To militate against that possibility, CMSPs should offer their subscribers a simple opt-out process. Customers should have the choice to opt-out of Amber Alerts. With that flexibility offered to end users, we believe that the classification of Amber Alerts should be adopted.

E. CMAS Message Content

At paragraph 17, the FCC seeks input on the content of CMAS message alerts. The CMSAAC recommended that *all* service providers support, at minimum, a capability for a text-based common alerting message format across multiple service platform technologies. We

agree with this requirement. Absent a pre-defined minimum capability, the commercial mobile service providers may not deploy a capability sufficient to transmit an entire message from the Alert Aggregator. In that case, a customer could end up receiving an incomplete message, defeating the advantages of the CMAS system.

F. CMAS Alert Message Elements

The CMSAAC recommended that 5 elements be included in the message format: event type, area affected, recommended action, expiration time with time zone, and sending agency.⁸ While California agrees that these 5 elements should be included, we support inclusion of an additional element for a URL and, if feasible, telephone numbers for network management controls such as dynamic routing, throttling traffic, permitting in bound traffic while blocking out going traffic, and other tools, should be able to manage any network congestion caused as a result of adding these elements to the message structure. Before including telephone numbers in this element, however, the CPUC urges the FCC to evaluate whether this including phone numbers would produce congestion in the network.

The CMSAAC further recommends that a process be developed by which new response Type Codes in addition to the standard CAP

⁸ NPRM, ¶ 18.

response type codes can be developed and registered. It is imperative that additional industry input from commercial vendors providing emergency notification solutions be solicited and become part of an ongoing process to develop and refine CAP response Type Codes.

G. The FCC Should Adopt a Set of Standardized Alerting Messages

The CMSAAC recommended a set of standardized alerting messages. In the NPRM, the Commission asks if the standardized alert messages also should include phone numbers, URLs or other contact information in a Commercial mobile alert as noted above, the CPUC supports inclusion of contact information such as URLs and phone numbers as an additional element in a standard alerting message.

H. The CMAS Should Accommodate Geographically-Targeted Messages

The NPRM, at paragraph 21, seeks comment on the level of precision that should be required for geographically targeted Commercial Mobile Alerts. In its

Comments filed in the EAS proceeding⁹, which we incorporate here by reference, the CPUC explained our need for geo-targeted and regional alerts.

To recap, the state of California covers 156,297 square miles, stretching over 800 miles south from the Oregon/California border to the U.S./Mexico border, and reaching approximately 250 miles from the Pacific ocean east to the borders of Nevada and Arizona. The state's expansive area, long ocean shoreline, climatic and topographic extremes, foothills, mountains, valleys, volcanoes, and geological faults afford a range of threats and hazards that could require geo-targeted or statewide warnings.

The southern California firestorm in autumn 2007 provides an example of the need for geo-targeted and regional alerts. In this recent disaster, 23 fires spread over seven counties incorporating a total population of approximately 21,000,000 and covering 41,000 square miles. At one point during the course of the firestorm, evacuations peaked with over 320,000 people being required to leave their homes.

The use of geo-targeted messages at the Zip Code level should be

⁹ Comments of the California Public Utilities Commission, The California office of Emergency Services, and the People of the State of California, filed *In the Matter of Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communications of the United Church of Christ, Inc, and the Minority Media and Telecommunications Council*, Petition for Immediate Relief, EB Docket No. 04-296, December 3, 2007.

available to states and local governments to address regional and local emergency situations of this type.

A key to the acceptance and use by the public of the CMAS will be the relevance of its messages. It is specifically important that the public not routinely receive messages that do not pertain to them – should that occur, the public will simply not hear, let alone heed, the messages that are relevant to their area. As a consequence of this concern, the CPUC considers geographic targeting at only the county level to be problematic for California. Counties in California are typically much too large to be a generic ideal level at which to target warnings for areas affected by flood or fire.¹⁰ For this reason, the CPUC recommends that the Commission consider using Zip Codes as the minimum geographic indicator for targeted alerts. California understands that there are technical considerations beyond our expertise, but we do have concerns about the consequences of launching a new major system with clearly inadequate initial parameters. The use of county as the target geographic unit for alerts is inappropriate for most emergencies.

¹⁰ Largest counties by square miles: San Bernardino County 20,062 square miles, Inyo County 10,192 square miles, Kern County 8,142 square miles. Largest Counties by population: Los Angeles County 9,520,000, Orange County 2,845,000, San Diego County 2,815,000. Population figures from United States Census Bureau 2000 Census.

I. Identify Urban Areas for CMAS Priority

The Commission seeks input on whether urban areas with populations exceeding 1,000,000 inhabitants (or other specialized alerting needs) be identified for priority consideration regarding more precise geo-coding.¹¹ Given the extreme geographical characteristics of the state of California, we endorse identification of urban areas of this size for priority in terms of more precise geo-coding to the extent that doing so is technically feasible. We support CMSAAC's recommendation that the FCC encourage DHS/FEMA to work with the CMSPs to develop better defined geographically specific alerting capabilities.

J. The CMAS Should Specifically Target the Elderly and Disabled

The NPRM seeks comment on what, if any, technical or accessibility requirements should be adopted to ensure that commercial mobile alerts can be received by the elderly, people with disabilities and other groups with special needs.¹² As we noted in our Comments in the FCC's EAS proceeding, the CPUC has a long-established record of programs, including its Deaf and Disabled Telecommunications Program, (DDTP), designed to make emergency information accessible

¹¹ NPRM, ¶ 22.

¹² NPRM, ¶ 23.

to persons with disabilities. We place particular importance on responding to the telecommunications needs of this population. Emergency information must be readily accessible through a wide array of devices, with sufficient redundancy so that individuals regardless of the technology are able to receive emergency information.¹³

It has come to the CPUC's attention that, although many alerting systems have the capacity to provide alerts formatted to be received by equipment and services utilized by the hearing impaired community, these capabilities are often not employed. For example, in the recent Southern California firestorms, the CPUC received information at an agency-sponsored workshop on the firestorms that disabled persons did not receive evacuation notices through their TTYs, notwithstanding assurances from vendors that their systems are TTY-sensitive. Through implementation of specific requirements designed to address the disabled community, the Commission should assure that alerts include the specific indicators, format, and information necessary to be used by equipment designed for the disabled communities.

¹³ *In the Matter of Review of the Emergency Alert System*, Petition for Immediate Relieve, EB Docket No 04-296, December 3, 2007, CPUC Comments at p. 8.

The FCC specifically identifies its goal in the NPRM as ensuring that Americans receive critical information regarding impending emergencies, "irrespective of what communications technologies they use" and asks for comment on whether CMAS would be used to, "transmit emergency alerts to all Americans."¹⁴ California understands that, given the final legislative language, CMSAAC considered its duties to be exclusively on the wireless side. However, the FCC needs to seriously consider this issue and ensure that wireline interoperability is addressed or the result may be a national warning system that inherently, and perhaps permanently, excludes a large portion of the population. Specifically, those who only use or have access to wireline phones, including disproportionately those more vulnerable to many kinds of emergencies, people who tend to be older, poorer, less technology-savvy and those in the disabled community that use wireline services to support specialized equipment such as TTYs that are not supported by wireless providers.

K. The CMAS Should Include Alerts in Multiple Languages

In response to the FCC's questions about multi-lingual requirements for commercial mobile alerts, California strongly

¹⁴ NPRM, ¶ 23.

supports all efforts to ensure that critical public safety information is accessible to every individual including those who are limited English speakers.¹⁵ A national leader in this area, the CPUC works to ensure that information about telecommunications is readily accessible to limited English proficiency (LEP) customers through targeted marketing campaigns and multiple outreach efforts. California currently provides a significant quantity of consumer information in English and multiple additional languages on www.calphoneinfo.com.¹⁶ The CPUC has adopted this practice because approximately 6.8 million, or roughly 30.1% of California's population has limited English proficiency (speaks English less than "very well"), and about another 1.3 million – or about 10.8% - California households are linguistically isolated, according to recent data.¹⁷ Recently, the CPUC adopted a decision to improve LEP customers' accessibility to information about their

¹⁵ NPRM, ¶ 24.

¹⁶ California uses different languages for different types of communications. The frequently used languages include Spanish, Cantonese, Mandarin, Tagalog, Vietnamese, Korean, Farsi, Arabic, and Hmong.

¹⁷ *In the Matter of Review of the Emergency Alert System*, Petition for Immediate Relieve, EB Docket No 04-296, December 3, 2007, CPUC Comments at p.9

telecommunications services contract(s) and other key disclosures relating to their telecommunications services.¹⁸ Further, California is aware that many other states have significant populations of non-English speakers, or speakers with limited English proficiency.

CMSAAC asserted that multilingual (and geo-targeted) alerting would raise latency (alert delay) concerns. However, various commercial alert service providers represent that they can provide alerts in six different languages. Given this information, California recommends that the FCC strongly consider requiring transmittal of alerts in a minimum of six languages, but explore the possibility of including additional languages. Clearly, further work is required with the commercial emergency notification providers on how they have provided multilingual alerts. For example, the FCC should examine whether, if the language of receipt is part of the pre-subscription process, would latency or delivery concerns be resolved.

L. Form of Customer Notice

In the NPRM, the FCC seeks input on how the election of CMPS licensees to choose to transmit alerts impacts subscribers, and the rules

¹⁸ See CPUC Decision 07-07-043, July 26, 2007 (addressing the needs of telecommunications consumers who have limited English proficiency, at http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/70869.htm).

and procedures for point of sale notification, and future changes in the service provider's election to transmit or not to transmit.¹⁹

1. Notice to New Subscribers

Given the requirements of the WARN Act, CMSPs should be required to provide conspicuous notice at point of sale to customers as to whether the provider will or will not be transmitting emergency alert messages. California strongly disagrees with the CMSAAC's recommendation to leave the method of notification up to the CMSP. The providers' interest in customer retention is too strong to leave to the provider how it notifies customers of its election not to provide emergency alerts. Thus, consistent with the WARN Act's provision that customers can decline or cancel service without penalty if a provider chooses not to transmit alerts, the FCC should specify the methods by which service providers should notify prospective and existing subscribers of its election to transmit emergency alerts or not.²⁰ The Commission should establish rules similar to those in Section 63.71 of the Code of Federal Regulation²¹ requiring notification

¹⁹ NPRM, ¶¶ 25 to 35.

²⁰ Notification to the subscriber at point of sale about the transmission of emergency alerts is not unlike the FCC's requirement for service providers to notify customers about alternative long distance providers during the pre-subscription process.

²¹ 47 C.F.R. § 63.71 (requiring any domestic service provider that seeks to discontinue, reduce or impair service to notify all affected subscribers of the planned discontinuance, reduction, or impairment of service, including a notice in writing to each affected subscriber with FCC mandated text); 47 C.F.R. § 63.90 (requiring a

in writing to each affected subscriber, and requiring a service provider who is discontinuing service to post a public notice of that discontinuance in a conspicuous place, such as posting notices in their commercial retail outlets, notice on their websites, and other appropriate measures.

2. Notice at Point of Sale

The point of sale, for purposes of this proceeding means retail, telephone, or Internet-based activity by which a service provider facilitates and promotes its services for sale to the public. At the “point of sale”, the service provider should be required to provide notice to its prospective customers in a manner similar to rules required by the FCC established in other proceedings to provide notice to subscribers and to display notification information in its places of business.²²

California considers “clear and conspicuous notice at point of sale” to include the following elements:

- a) A notice provided to, and acknowledgment received from, new customers at the time and date of sale. Customers should be asked to indicate their understanding that the

service provider discontinuing service to post a public notice of 20 inches by 24 inches in a conspicuous place and containing all pertinent information related to the discontinuance.)

²² 47 C.F.R. § 20.18(m) in which the Commission requires of commercial mobile services to ensure that all mobile devices or other devices offered to their subscribers for voice communications are capable of transmitting enhanced 911 information to the appropriate PSAP.

service provider does or does not offer emergency alerts, at the point of sale, signing that they have read and understand the disclosure.

- b) The notice at the point of sale needs to be large and prominent in its placement on placards or their equivalent.
- c) Each device sold by the service provider must include a notice that emergency alerts are or are not included as a feature of the device or the service provider's service.²³

California notes the CMSAAC recommendation that no disclosure is required for providers that fully (throughout their service area) participate in CMAS.²⁴ The FCC should consider whether this is an opportunity for carriers to inform their customers about CMAS, and then address what forms of notice or information should be provided to customers. If a provider only offers service in a portion of its territory, notice to customers, similar to the aforementioned, should be required, and that particular notice should expressly state in which portion of the provider's service territory emergency alerts will be offered and in which portion alerts will not be offered.²⁵

²³ NPRM, ¶ 28.

²⁴ NPRM, ¶ 29.

²⁵ Further, the point of sale represents an opportunity to educate the consumer on additional emergency notification services, such as those provided by the local municipality, county, state or university. Such systems currently require the consumer to "opt in", that

Public outreach is critical for ensuring awareness and responsiveness to the effort to deploy CMAS. California encourages the FCC to conduct workshops, prepare websites and utilize other outreach tools to educate the public about the new CMAS. California intends to conduct its own outreach and consumer education efforts to ensure that its citizens understand and can access CMAS.

3. Notice to Existing Subscribers

The FCC seeks comment on how notice should be provided to existing subscribers.²⁶ The CPUC urges the Commission to require, at minimum, a notification regime similar to that required for VOIP providers for E911 service.²⁷ However, California recommends a flexible notice requirement which should allow for the use of direct mailings, paper bills, emails, and website notices. Providers should also be required to verify that acknowledgment was received from incumbent customers at a time and date designated by the Commission but prior to CMAS

is, provide the local entity their cellular phone number so it may be manually entered into a local emergency notification system. The point of sale represents an opportunity to also educate the consumer on existing emergency notification systems in the customer's area, and how the consumer could "opt in" to such systems.

²⁶ NPRM, ¶ 30.

²⁷ 47 C.F.R. § 9.5(e)(1) requires interconnected VOIP service providers to advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

implementation. Customers should be asked to indicate their understanding that the service provider does not offer emergency alerts and should be required to sign a document (or otherwise demonstrate, such as through electronic acceptance) indicating that they have read and understood the notice. This notice should in no case be combined with other direct mailings containing marketing materials. Although the notice may be included on paper bills and provided by a means appropriate for that specific customer, the notice should meet the other requirements enumerated here, sent directly and independently of other mailings or electronic notices, and requesting acknowledgment by mail or an electronic equivalent that can be verified.

For example, the CPUC recognizes that carriers communicate with, and even bill, their customers using a variety of formats and means. If carrier-to-customer communications are conducted electronically, or over a wireless device, California supports use of that means to notify customers if the carrier elects to stop transmitting emergency alerts. Indeed, in that context, the customer may ignore a communication sent by U.S. mail but be properly apprised of the carrier's notice if received by e-mail. The critical component of such a notice is that it must be separate from any other notice, and must be clearly stated and conspicuously presented, per the WARN Act.

For those customers who have declined, by opt-out procedures or other means, to receive direct mailings from the service provider, service providers should be required to demonstrate to the Commission that they have taken reasonable steps, such as website postings, email, text message or other customer approved communications to inform subscribers of the decision not to transmit alert messages.

M. Filing Requirements

The NPRM also seeks comment on the WARN Act filing requirements which require that the FCC establish procedures relating to the election to transmit emergency messages and the election to withdraw its election.²⁸ Specifically, the FCC seeks comment on the method for accepting, monitoring, and maintaining service provider election and withdrawal information. While electronic submission of this data to the FCC will be the most efficient method, the CPUC considers it essential for the states, including California, to have access to this data. It is critical that we are informed of the CMSPs intentions regarding transmission of emergency alerts. The initial report should include, at a minimum, the “C” reference point, the CMS provider Gateway, the CMS provider infrastructure, and the mobile device with

²⁸ NPRM, ¶ 31.

CMAS functionality. As well, the initial report should include any geographic variations in the commitment to provide emergency alerts.

The CMSPs should also be required to file a report with the FCC to attest to their adoption of the Commission's standards, protocols, procedures, and other technical requirements. The report should also include the CMSPs arrangements for working with the Alert Aggregator, their technical connections with the Alert Gateway, the links used to provide that connection, and a description of their technical capability for providing state regional and local alerts.

N. Customer Ability to Terminate Contracts in Response to Carrier Notice of Non-Participation

The WARN Act requires the FCC to establish procedures to allow subscribers to terminate subscriptions without penalty or early termination fee with any service provider that withdraws from CMAS participation.²⁹ The FCC should prescribe specific procedures for so informing customers and accomplishing terminations rather than having providers design their own procedures. Providers' interests in retaining customers may directly contradict their duty to their customers and the public interest in allowing customers to unconditionally leave non-participating providers. Uniformly

²⁹ NPRM, ¶ 31.

mandated and specific procedures designed by the Commission are more likely to effectively achieve this goal. The process the FCC designs should include notice to customers in clear and explicit language citing the statute. These notices should also facilitate the ability of a customer to automatically respond and immediately discontinue service. Customer acknowledgment of this information should be required by signature and dating or some corresponding affirmative action as done for non-participating providers at the point of initial sale.

O. Customer Choices upon Receipt of Notice of Carrier Opt-Out Option

At paragraph 36 in the NPRM, the FCC notes that the WARN Act provides an opt-out option for subscribers not to receive alerts (except for Presidential-level messages, which are always transmitted). CMSPs should be required to inform subscribers that they have the choice of opting out, that is, the choice not to receive level two and three classification alerts. Some subscribers may prefer to rely on other media such as the EAS system, for their emergency alerts.

P. Testing Issues

In the NPRM, the FCC seeks comment on what type of testing regime should be required.³⁰ California supports adoption of the CMSAAC proposed testing procedures as sufficient to satisfy the requirements of section 602(f) of the WARN Act. The CPUC also considers the current testing procedures for the EAS a satisfactory model for the periodic testing of the CMAS system after it has been deployed. To ensure reliability of the new CMAS system, the CPUC strongly endorses a process including thorough testing before the system is widely deployed. Consistent with that deep concern, the CPUC has offered California as a candidate to be the “first office application” beta test for the new system.

III. CONCLUSION

California strongly supports the Commissions efforts to adopt rules to implement the Commercial Mobile Alert System. We encourage the Commission to adopt the foregoing recommendations to achieve its goals of ensuring that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding impending disasters and other emergencies.

Respectfully submitted,

³⁰ NPRM, ¶ 41.

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February 4, 2008

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Commission

CERTIFICATE OF SERVICE

I, Helen M. Mickiewicz, hereby certify that on this 4th day of February, 2008 a true and correct copy of the forgoing **“COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AN THE PEOPLE OF THE STATE OF CALIFORNIA”** was mailed first class, postage prepaid to all known parties of record.

/s/ HELEN M. MICKIEWICZ

HELEN M. MICKIEWICZ